

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of
Carbon/Emery Telcom, Inc. for an Increase
in Utah Universal Service Fund Support

DOCKET NO. 15-2302-01

ORDER ON MOTION TO VACATE
HEARING DATES

SECOND AMENDED NOTICE OF
HEARINGS

BRIEFING SCHEDULE ON
PENDING MOTION FOR PARTIAL
SUMMARY JUDGMENT

NOTICE OF DISPOSITIVE MOTION
DEADLINE

ISSUED: September 25, 2015

I. MOTION TO VACATE HEARING DATES

On May 5, 2015, the Public Service Commission of Utah (Commission) issued a scheduling order setting the hearings in this matter to begin on Tuesday, September 29, 2015.¹

On September 18, 2015, Carbon/Emery Telcom, Inc. (Carbon) filed a motion for partial summary judgment regarding the proper method for calculating depreciation of its assets in order to determine what revenue shortfall, if any, is subject to reimbursement from the Utah Universal Service Fund (UUSF). In response, the Division of Public Utilities (Division) filed a motion to vacate the hearing date in order to allow time for briefing on the motion for partial summary judgment.

In order to rule on the motion to vacate the hearing date, the Commission must first rule on the question of whether this docket is governed by Utah Code § 54-7-12(3). In relevant part,

¹ On May 11, 2015, the Commission issued an amended scheduling order. The hearing date was not changed under the amended schedule.

the statute states that the Commission is required to "issue a final written order within 240 days after [a] public utility submits a complete filing" for a rate increase or decrease.² If the Commission fails to meet the 240-day deadline, the public utility's proposed rate increase or decrease is final, and the Commission may not take action as to any amounts already collected or returned by the utility.

Utah Code § 54-7-12(1)(b) defines a "complete filing," in relevant part, as "an application filed by a public utility ... for a general rate increase or decrease." Utah Code § 54-7-12(1)(c) and (d) establish that a general rate increase or decrease is one that has a "*direct* [effect on] a public utility's base rates" (emphasis added).

The parties in this case are amenable to continuing the hearing date. In addition, all parties agree that the application at issue does not fall under the definition of a general rate case because Carbon has not proposed to change any rate it charges to a customer. Rather, Carbon has requested that certain operational costs be reimbursed from the UUSF.³

The Commission recognizes that a final order on Carbon's application could conceivably affect customer rates. If the application is denied, Carbon might then determine to request a rate increase in order to meet the operational costs at issue. If the application is granted, the resources currently available in the UUSF might have to be evaluated. If it were determined that the fund contained inadequate resources, then the surcharge paid by all Utah telecommunications

² Carbon filed an amended application on April 2, 2015. Therefore, the 240-day deadline, if applicable, falls on Friday, November 27, 2015.

³ On September 23, 2015, the Commission ordered all parties, including the Office of Consumer Services and Intervenor Utah Rural Telecom Association, to file written position statements addressing the question of whether Section 54-7-12(3) applies to an application for UUSF support. On September 24, 2015, the Commission received the parties' written statements, which are included in the docket for this case.

customers might have to increase. However, the Commission agrees with the parties that any such result would be an indirect outcome of Carbon's application.

Having reviewed the parties' positions and evaluated the plain language of the statute, the Commission finds and concludes that the 240-day deadline set forth in Utah Code § 54-7-12(3) does not apply to an application for UUSF support. Therefore, the hearing dates in this docket may be vacated and rescheduled without jeopardizing the Commission's jurisdiction.

ORDER

The Commission grants the Division's motion to vacate the hearing dates in this docket. Both the UUSF eligibility hearing and the public witness hearing scheduled for September 29, 2015 are vacated.

II. SECOND AMENDED NOTICE OF HEARINGS

The amended notices of hearings issued May 11, 2015 in this docket are hereby amended as follows:

1. The UUSF eligibility hearing shall begin on **Monday, November 2, 2015**, 9:00 A.M., in the Fourth Floor Hearing Room 451, Heber M. Wells Bldg., 160 East 300 South, Salt Lake City, Utah.
2. The public witness hearing shall take place on **Monday, November 2, 2015**, 12:00 P.M., in the Fourth Floor Hearing Room 451, Heber M. Wells Bldg., 160 East 300 South, Salt Lake City, Utah.
3. If necessary, the UUSF eligibility hearing will continue on **Tuesday, November 3, 2015**, 9:00 A.M., in the Fourth Floor Hearing Room 451, Heber M. Wells Bldg., 160 East 300 South, Salt Lake City, Utah.

III. BRIEFING SCHEDULE: MOTION FOR PARTIAL SUMMARY JUDGMENT

1. Any response to Carbon's motion for partial summary judgment shall be filed no later than close of business on **Monday, October 5, 2015**.
2. Carbon may file a final reply on its motion for partial summary judgment no later than close of business on **Tuesday, October 13, 2015**.

IV. NOTICE OF DISPOSITIVE MOTION DEADLINE

Any party to this docket that wishes to file a dispositive motion, whether full or partial, shall do so no later than close of business on **Friday, October 2, 2015**. If a dispositive motion is filed, the presiding officer will issue a supplemental scheduling order setting deadlines for responses and final reply.

DATED at Salt Lake City, Utah, this 25th day of September, 2015.

/s/ Jennie T. Jonsson
Administrative Law Judge

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Approved and confirmed this 25th day of September, 2015 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#269533

CERTIFICATE OF SERVICE

I CERTIFY that on the 25th day of September, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

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